

22. (New) The cosmetic product of claim 4, wherein the covering material covers at least a portion of the base and at least a portion of the cover.

23. (New) The cosmetic product of claim 22, wherein the covering material comprises a single piece of unitary construction.

24. (New) The cosmetic product of claim 23, wherein the covering material covers at least a portion of the hinge.

25. (New) The cosmetic product of claim 24, wherein the covering material defines substantially all of the visible surface of the cosmetic product.

REMARKS

Claims 1-25 are pending in the application. By this Amendment, claims 1, 4, 8, 9, and 15 have been amended, original claims 17 and 18 have been renumbered as claims 16 and 17, respectively, to correct the inadvertently omitted claim number, and new claims 18-25 have been added. No new matter has been added. Prompt examination and allowance of this application are earnestly requested.

In the Office Action, claims 1 and 3 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,446,965 to Montiel, and claims 1, 2, 4, 5, 7, and 10-14 were rejected under § 102(b) as being anticipated by U.S. Patent No. 6,055,992 to Skarne. In addition, claims 8, 9, and 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Skarne, and claim 6 was rejected under § 103(a) as being unpatentable over Skarne in view of U.S. Patent No. 5,865,194 to Gueret. Applicant respectfully traverses these rejections.

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Regarding independent claim 1, Montiel does not disclose or suggest a cosmetic product, including at least one recess formed in a foam core for surrounding and containing a cosmetic composition. The Examiner asserts that Montiel discloses a "cosmetic product (fig. 1) comprising a foam core (16), [and] at least one recess (20) forming in the foam core." Applicant respectfully disagrees and submits that the structure corresponding to reference numeral 20 relates to cross-slits that do not define a recess. To the contrary, the cross-slits 20 appear to be closed in the absence of an inserted object, for example, a finger, and therefore are not configured to surround and contain a cosmetic composition. Instead, the closed cross-slits 20 merely facilitate insertion of a finger tip into the sponge 16. Col. 1, lines 59-61. Accordingly, Applicant requests that the rejection under § 102(b) over Montiel be withdrawn.

Regarding Skarne, that reference does not disclose or suggest a covering material covering at least a portion of a foam core and defining an exterior surface of a cosmetic product, wherein the covering material comprises a material other than foam," as recited in amended claim 1. To the contrary, Skarne discloses two co-extensive flaps 26, 28 that define a housing 20 composed of an elastomeric foam with an exterior surface having a matte surface. Skarne does not disclose or suggest a covering material covering the flaps 26, 28. In other words, the foam flaps 26, 28 define the exterior surface of the housing 20, and the housing 20 does not include a covering material comprising a material other than foam, as recited in claim 1.

Independent claim 4, as amended, recites a cosmetic product comprising "a covering material covering at least a portion of at least one of the base, the cover, and

the hinge, the material defining an exterior surface of the cosmetic product.” Skarne does not disclose or suggest such a covering material. Accordingly, Applicant submits that the rejection under § 102(b) over Skarne should be withdrawn.

Regarding independent claim 16 (originally mis-numbered as claim 17), the Examiner asserted that it would have been obvious “to construct the portion of the base, cove [sic] and the hinge being covered [with] a Lycra material.” Applicant respectfully disagrees and submits that Skarne does not disclose or suggest a material covering at least a portion of a base or a cover, as recited in amended claim 16. Accordingly, Applicant submits that the rejection under § 103(a) based on Skarne should be withdrawn.

Gueret does not overcome the above-noted deficiencies of Montiel and Skarne, and is not relied upon for such disclosure. Accordingly, Applicant submits that independent claims 1, 4, and 16 are patentable over the cited art.

Each of claims 2, 3, 5-15, and 17-25 depends from one of independent claims 1, 4, and 16, and is therefore allowable for at least the same reasons its respective independent claim is allowable. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each are separately patentable.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

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The Examiner is invited to telephone the undersigned at (202) 408-4252 if the Examiner deems that a telephone conversation would further the prosecution of the application.

If there is any fee due in connection with the filing of this Amendment, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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APPENDIX SHOWING CHANGES MADE TO CLAIMS

IN THE CLAIMS:

1. (Amended) A cosmetic product comprising:

a foam core; [and]

at least one recess formed in the foam core, the at least one recess for
surrounding and containing a cosmetic composition; and

a covering material covering at least a portion of the foam core and defining an
exterior surface of the cosmetic product,

wherein the covering material comprises a material other than foam.

4. (Amended) A cosmetic product, comprising:

a base formed at least partially of foam;

a cover formed at least partially of foam;

a hinge connecting the base and the cover;

a covering material covering at least a portion of at least one of the base, the
cover, and the hinge, the material defining an exterior surface of the cosmetic product;
and

at least one recess formed in the base, the recess for surrounding and containing
a cosmetic composition.

8. (Amended) The cosmetic product of claim 4, wherein [at least a portion of
one of the base and the cover is covered with a] the covering material [being] is chosen
from fabric, facsimile of fabric, animal skin, and imitation animal skin.

9. (Amended) The cosmetic product of claim 4, wherein the covering

material is Lycra.

15. (Amended) The cosmetic product of claim 4, wherein the hinge is constructed of a foam core and is covered at least partially by [fabric] the covering material.

[17] 16. (Amended) A cosmetic product, comprising:

a base formed at least partially of foam;

a cover formed at least partially of foam;

a hinge connecting the base and the cover;

a material covering at least a portion of one of the base and the cover, the material being chosen from fabric, facsimile of fabric, animal skin, and imitation animal skin;

a plurality of [recess] recesses in at least one of the base and the cover;

a mirror located in a first of the plurality of recesses, wherein foam edges of the first recess surround and contain the mirror;

a cosmetic composition contained in a second of the plurality of recesses, wherein foam edges of the second recess surround and contain the cosmetic composition; and

a fastener for selectively securing the cover in a closed position.

[18] 17. (Amended) The cosmetic product of claim [17] 16, wherein the cosmetic composition includes a cosmetic substance for application to an external portion of a body and a tray for holding the cosmetic material, and wherein the edges of the second recess surround and contain the tray.